BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HARRISON PONTIAC COMPANY)

Appearances:

For Appellant: William Feinblum, Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel, Crawford H. Thomas, Associate Counsel

O P I N I O N

This appeal is made pursuant to Section 25666 of the Revenue and Taxation Code (formerly Section 25 of the Bank and Corporation Franchise Tax Act) from the action of the Franchise Tax Board on the protests of Harrison Pontiac Company to proposed assessments of additional franchise tax in the amounts of $105.77, $367.30 and $123.83 for the income years 1945, 1946 and 1947, respectively, the amounts thereof having been reduced by the Franchise Tax Board to $53.82, $337.99 and $60.54, respectively.

The Appellant is a California corporation engaged in business as a retail dealer in new and used automobiles, some of which it sells on the installment plan. It keeps its books and files its returns on the accrual basis. During the years in question Appellant sold its installment sales contracts and notes to General Motors Acceptance Corporation, hereinafter referred to as GMAC, Under its agreement with Appellant for the purchase of such contracts and notes GMAC assumed certain enumerated risks of loss. Losses arising from all other causes were the responsibility of Appellant. To protect the Appellant against losses not covered by insurance or GMAC responsibility 3% of the unpaid balance of each contract was set aside by GMAC as a "dealer's reserve," which by the terms of the agreement was to be "paid periodically" to Appellant. Pursuant to its agreement GMAC struck a balance with Appellant at monthly intervals, retaining in the reserve only 3% of the unpaid balance of contracts then on hand.

The position of the Appellant that the amount withheld by GMAC on each contract did not accrue prior to the time such amount actually became due and payable to Appellant or that it was deductible from gross income as an addition to a reserve under Section 8 of the Bank and Corporation Franchise Tax Act cannot, in our opinion, be sustained.

In Shoemaker-Nash, inc., 41 B.T.A. 417, the Board of

Tax Appeals held that reserve credits allowed to the taxpayer, a retail dealer in automobiles, were absolute credits at the time of the sale of the installment notes on which the credits were based, Colorado Motor Car Co., B.T.A.M. Dec., Docket 96860, entered March 25, 1940; Royal Motors, T.C.M. Dec., Docket 5380, entered July 12, 1945; and Town Motors, Inc., T.C.M. Dec., Docket 2697, entered July 24, 1946; involving similar facts are in accord, as is G.C.M. 9571, CB X-2, 1931, 153. As in those cases, the reserve here set aside was to be paid to the dealer or used to satisfy amounts due from the dealer on its guaranties and obligations.

In support of its contention that the amounts withheld by GMAC did not constitute earned income accruable as the sales of the contracts were made, Appellant relies upon Beaudry v. Commissioner, B.T.A.M. Dec., Docket 99343, entered February 14, 1941, and Keasbey and Mattison Co. v. United States, 141 Fed. 2d 163. We do not regard these decisions as controlling. On the basis of the agreements involved therein the reserve funds were held to be contingent and unascertainable throughout the taxable year. We are of the opinion, however, that under the GMAC agreement Appellant had a fixed right to receive the amounts credited to its reserve account, that reserve being in all material respects precisely similar to the reserves considered in the Shoemaker-Nash line of cases.

During the years herein involved Section 8(e) of the Franchise Tax Act allowed the deduction of debts which became worthless within the income year or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts. During these years the Appellant was not on the reserve basis nor had it obtained the required permission of the Commissioner to adopt that basis. The amounts in question are not deductible, accordingly, as an addition to a reserve for bad debts.

While certain other adjustments were made by the Franchise Tax Board in the determination of Appellant's net income, the Appellant has abandoned its objections thereto and they are not now in controversy,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Harrison Pontiac Company to proposed assessments of franchise tax in the amounts of $105.77, $367.30 and $123.83 for the income years 1945, 1946, and 1947, respectively, the amounts thereof

having been reduced by the Franchise-Tax Board to $53.82, $337.99 and $60.54, respectively, be, and the same is hereby, sustained.

Done at Sacramento, California, this 29th day of May, 1952, by the State Board of Equalization.

Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo, R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary